

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re RICHARD BELL,

No. C 10-04885 SBA (PR)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL AND
GRANTING PETITIONER A SECOND
EXTENSION OF TIME TO FILE HIS
PETITION AND TO PAY THE FILING
FEE OR COMPLETE HIS IFP
APPLICATION**

On October 28, 2010, Petitioner, a state prisoner, filed a document with the Court in the instant case, which was opened as a habeas corpus action. On the same day the action was filed the Clerk of the Court sent a notice to Petitioner informing him that his action could not go forward until he filed with the Court a habeas corpus petition form, completed in full, within thirty days or his action would be dismissed. He was also sent another notice directing him to either pay the filing fee or filed a completed prisoner's in forma pauperis (IFP) application. The Clerk sent Petitioner a blank IFP application and told him that he must pay the fee or return the completed application within thirty days or his action would be dismissed.

In an Order dated January 25, 2011, the Court granted Petitioner an extension of time to file his petition within sixty days from the date of that Order. More than sixty days have passed, and Petitioner has not filed a petition. Nor has Petitioner paid the filing fee or completed an IFP application. Instead, Petitioner has filed a motion for appointment of counsel in this action as well as a motion for another extension of time to file a petition.

The Sixth Amendment right to counsel does not apply in habeas corpus actions. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). Title 18 U.S.C. § 3006A(a)(2)(B), however, authorizes a district court to appoint counsel to represent a habeas petitioner whenever "the court determines that the interests of justice so require" and such person is financially unable to obtain representation. The decision to appoint counsel is within the discretion of the district court. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986); Knaubert, 791 F.2d at 728; Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984). The courts have made appointment of counsel the

1 exception rather than the rule by limiting it to: (1) capital cases; (2) cases that turn on substantial and
2 complex procedural, legal or mixed legal and factual questions; (3) cases involving uneducated or
3 mentally or physically impaired petitioners; (4) cases likely to require the assistance of experts either
4 in framing or in trying the claims; (5) cases in which petitioner is in no position to investigate crucial
5 facts; and (6) factually complex cases. See generally 1 J. Liebman & R. Hertz, Federal Habeas
6 Corpus Practice and Procedure § 12.3b at 383-86 (2d ed. 1994). Appointment is mandatory only
7 when the circumstances of a particular case indicate that appointed counsel is necessary to prevent
8 due process violations. See Chaney, 801 F.2d at 1196; Eskridge v. Rhay, 345 F.2d 778, 782 (9th
9 Cir. 1965). Such is not the case here. Accordingly, the interests of justice do not require
10 appointment of counsel at this time, and Petitioner's request is DENIED.

11 As mentioned above, Petitioner has also filed a request for an extension of time to file a
12 petition. Because the Court has denied his motion for appointment of counsel, it appears that
13 another brief extension is warranted. Therefore, his motion for an extension of time to file a petition
14 is GRANTED. Petitioner shall file his petition along with the filing fee or a completed prisoner's in
15 forma pauperis (IFP) application no later than **thirty (30) days** from the date of this Order.

16 If Petitioner fails to file a completed § 2254 habeas petition or the requisite filing fee/IFP
17 application form within the thirty-day deadline, this case will be closed for failure to prosecute under
18 Rule 41(b) of the Federal Rules of Civil Procedure. See Link v. Wabash R.R., 370 U.S. 626, 633
19 (1962) (pursuant to Rule 41(b), a district court may sua sponte dismiss an action for failure to
20 prosecute or to comply with a court order); see also Malone v. United States Postal Serv., 833 F.2d
21 128, 133 (9th Cir. 1987) (the district court should afford the litigant prior notice before dismissing
22 for failure to prosecute).

23 The Clerk shall send Petitioner a blank § 2254 habeas petition form as well as a blank
24 prisoner IFP application form along with his copy of this Order. This Order terminates Docket no.
25 6.

26 IT IS SO ORDERED.

27 Dated: 4/20/11

28 
SAUNDRA BROWN ARMSTRONG

1 UNITED STATES DISTRICT JUDGE

2 UNITED STATES DISTRICT COURT
3 FOR THE
4 NORTHERN DISTRICT OF
5 CALIFORNIA

6
7 RICHARD BELL,

8 Plaintiff,

9 v.

10 / et al,

11 Defendant.
12 _____/

Case Number: CV10-04885 SBA

CERTIFICATE OF SERVICE

13 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
14 Court, Northern District of California.

15 That on April 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
16 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
17 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
18 receptacle located in the Clerk's office.

19 Richard Bell J-24297
20 California Men's Colony East State Prison
21 P.O. Box 8101
22 San Luis Obispo, CA 93409-8101

23 Dated: April 25, 2011

24 Richard W. Wieking, Clerk
25 By: LISA R CLARK, Deputy Clerk
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